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## Yellen Offers Little Insight on Administration's Post-TCJA Plans

Department of the Treasury Secretary Janet Yellen offered members of the House Ways and Means Committee limited insight as to how the Biden Administration will handle the provisions of the Tax Cuts and Jobs Act that are expiring in 2025.

Speaking during an April 30, 2024, hearing, Yellen offered a common retort when pressed about any of the expiring tax cuts – that it is the administration's position that there will be no new taxes for taxpayers making under $400,000 per year.

"President Biden has said he would oppose allowing tax cuts to expire for people making under $400,000," Yellen testified, but did not qualify that comment with specific provisions that he wants to see extended, other than to simply say that there "will be a negotiation over what to do when these tax cuts expire. And the President, as he does in many other situations, will negotiate with Congress."

She reiterated the principles that will guide future negotiations – the repeatedly stated opposition to anything that raises taxes for those making less than $400,000 and ensuring that the wealthy and large corporations are paying their fair share. She also highlighted that the Biden in his most recent budget proposal is pushing to expand the Child Tax Credit.

Yellen also defended negotiations as part of the OECD from challenges by GOP members of the committee, arguing that the "pillar two agreement that's been reached is very much in support of goals that are good for this country."

She also touched on the Direct File pilot, repeating recent remarks from Internal Revenue Service Commissioner Daniel Werfel that while the pilot is initially being looked at as successful, the final decision on whether to proceed with it has not been made.

## IRS Updates Strategic Operating Plan

*IR-2024-130*

IRS released an update on the Strategic Operating Plan (SOP) outlining the major projects and outcomes IRS expects to deliver over the next 12 to 18 months. The SOP is a blueprint which essentially outlines the agency's transformation work while highlighting the dozens of improvements for taxpayers since passage of the Inflation Reduction Act in August 2022. The agency has improved taxpayer service while taking steps to add fairness to tax compliance and adding new technology tools to help taxpayers and the tax professional community. While the agency prides itself of one of its most successful filing seasons ever, "we realize we need to do a lot more to make improvements and transform the IRS for the benefit of taxpayers, tax professionals and the nation," IRS Commissioner Danny Werfel said.

The IRS also released a report summarizing its current work and outlining the agency's plans to make fundamental changes with Inflation Reduction Act funding. "The changes outlined in this report are a stark contrast to the years of under-funding that deteriorated

taxpayer service and tax enforcement, frustrating taxpayers, the tax community, and IRS employees alike," Werfel added. "We have made fundamental changes that have improved taxpayer services, brought new fairness to compliance efforts, and launched important changes to our technology. We are making a difference to taxpayers and the nation, and the improvements at the IRS are just beginning." The update for the future plan includes progress on the Simple Notice Initiative, enforcement activities and efforts to modernize foundational technology and improve IRS employee tools to help taxpayers. The plan focuses on five objectives ranging from improved taxpayer services to retention of skilled workforce in the agency. The SOP update also highlights areas where changes will be made, including live assistance, expansion of online services, digitalization, and ensuring fairness in enforcement.

## 2023 Nonconventional Source Fuel Reference Price Issued

The IRS has published the nonconventional source production credit reference price under Code Sec. 45K(d)(2)(C). The reference price for calendar year 2023 is $76.10. The credit period for the nonconventional source production credit under Code Sec. 45K ended on December 31, 2013, for facilities producing coke or coke gas (other than from petroleum based products). However, the reference price continues to apply in determining the amount of the enhanced oil recovery credit under Code Sec. 43, the marginal well production credit for qualified crude oil production under Code Sec. 45I, and the percentage depletion in case of oil and natural gas produced from marginal properties under Code Sec. 613A.

*Publication of Nonconventional Source Production Credit Reference Price for Calendar Year 2023*

# New Clean Vehicle Credit and Used Clean Vehicle Credit Regulations Finalized

*T.D. 9995; IR-2024-131*

The IRS issued final regulations to implement the Code Sec. 25E credit for previously owned clean vehicles and the Code Sec. 30D credit for new clean vehicles. The final regs largely adopt proposed regulations from NPRM REG-120080-22 issued on April 17, 2023; NPRM REG-113064-23 issued on October 10, 2023; and NPRM REG-118492-23 issued on December 4, 2023. Significant changes to the final regs are discussed below.

## Applicability Dates

The final regs generally apply to tax years ending after the latest publication date of the related proposed regulation. Accordingly, the Code Sec. 25E final regulations generally apply to tax years ending after October 10, 2023; the Code Sec. 30D final regulations generally apply to tax years ending after December 4, 2023; the final regulations regarding transfer of the credits to a seller or dealer apply to clean vehicles placed in service after December 31, 2023, in tax years ending after that date; and the final regulations for to the foreign entity of concern (FEOC) restriction on batteries in new clean vehicle apply to vehicles placed in service after December 31, 2023.

## Final Regs for Both New and Used Clean Vehicle Credits

Several changes in the final regs apply to both the new clean vehicle credit and the previously owned clean vehicle credit. An original equipment manufacturer (OEM) may be a dealer if it is licensed in any jurisdiction. An incentive is any reduction in price available to the taxpayer from the dealer or manufacturer, including in combination with other incentives, other than a reduction resulting from the dealer's treatment of a transferred credit as a partial payment or down payment. To avoid conflict with some state laws that prohibit a dealer from making cash payments in connection with financed purchases, the final regulations also clarify that a reduction in the sale price is an acceptable way for the dealer to pay for a transferred credit. For clarity, the final regulations incorporate the provisions of Rev. Proc. 2022-42, 2022-52 I.R.B. 565, sec. 4.03, regarding taxpayer reliance on manufacturer certifications of qualified manufacturer status, and certifications and information a qualified manufacturer provides to the IRS in periodic written reports. The final regulations also delineate what taxpayer reliance means in this context.

**REFERENCE KEY**

**USTC** references are to ***U.S. Tax Cases***
**Dec** references are to ***Tax Court Reports***

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The multiple manufacturer rule, under which the manufacturer requirements must be met by the manufacturer that satisfies reporting requirements for greenhouse gas emission standards, is modified to include a manufacturer that modifies a new vehicle into either a new clean vehicle or a qualified commercial clean vehicle (uplifter). Thus, an uplifter may enter into an agreement with the IRS to be a qualified manufacturer for modifications made before the new motor vehicle is placed in service. This rule also applies to the Code Sec. 45W credit for commercial clean vehicles.

A clean vehicle is made by a qualified manufacturer if the manufacturer is a qualified manufacturer at the time its submits its written report for the vehicle to the IRS. For examples, a used clean vehicle manufactured before the used clean vehicle credit became effective may be made by a qualified manufacturer if the manufacturer is qualified when the vehicle is delivered to the taxpayer.

## IRS Accepting Applications for TCE and VITA Grants

The IRS has announced that eligible organizations can apply for funding to provide free federal tax return preparation assistance from May 1, 2024. Organizations can apply for the Tax Counseling for the Elderly (TCE) and Volunteer Income Tax Assistance (VITA) grants till May 31, 2024. Last year, grant recipients from the two programs helped taxpayers file more than 2.1 million tax returns nationwide. The TCE program was established in 1978 to provide tax counseling and return preparation to taxpayers that are 60 years or older. The VITA program was established to provide free tax filing help to underserved communities in the hardest-to-reach urban and non-urban area. Both programs aim to assist and increase the ability of targeted taxpayers to file returns electronically. For more information on TCE and VITA grants, visit the IRS website.

*IR-2024-126*

## Final Regs for Used Clean Vehicle Credit

The final regulations clarify that vehicles that may qualify as previously-owned clean vehicles include battery electric vehicles, plug-in hybrid electric vehicles, fuel cell motor vehicles, and plug-in hybrid fuel cell motor vehicles.

A new qualified fuel cell motor vehicle is any new qualified fuel cell motor vehicle that satisfies the requirements for final assembly in North America and seller reports, and does not have a clean vehicle battery. This definition includes otherwise qualifying vehicles that have only a "start-stop" battery, because such a battery is not a clean vehicle battery. A new qualified fuel cell motor vehicle is deemed to satisfy the critical minerals and battery components requirements discussed below, so the credit for the vehicle is $7,500. However, a qualified fuel cell motor vehicle with a clean vehicle battery, such as a plug-in hybrid fuel cell electric vehicle, must satisfy the critical minerals and battery components requirements because it draws electricity from the clean vehicle battery.

The rule requiring the taxpayer to attach Schedule A (Form 8936), Clean Vehicle Credit Amount, to the income tax return that reports the credit is expanded to include information returns for partnerships and S corporations that claim the credit as part of the general business credit.

Vehicle classifications may be based on a slightly expanded list of Environmental Protection Agency (EPA) regulations.

A dealer that purchases a new clean vehicle to use as a loaner no longer must recapture its new clean vehicle credit if, after using the vehicle as a loaner for more than 30 days, the dealer offers it for sale as a used clean vehicle.

## New Vehicle Credit and Modified AGI Limit

The final regs clarify that estates and nongrantor trusts, as well as individuals, must satisfy the modified adjusted gross income (AGI) test to be eligible for the new clean vehicle credit, including the $150,000 threshold amount. An estate or nongrantor trust is treated as having modified AGI above the threshold amount for any year in which it is not in existence. The credit is allocated to the grantor or another person treated as owning all or part of a grantor trust, and the modified AGI limit is based on that grantor or deemed owner, rather than the trust or any beneficiary.

For partnerships and S corporations that claim the new vehicle credit as part of the general business credit, the modified AGI limit applies on a partner or shareholder level The modified AGI limit does not apply to corporations and taxpayers other than individuals, estates, trusts, and partners or shareholders of passthrough entities.

## New Clean Vehicle Credit Critical Mineral Test

The final regs make several changes to the tests a new clean vehicle must satisfy for critical minerals in the battery. Most of these changes are highly technical and relatively minor.

Precursor or other intermediate materials in each step of extraction, processing, or recycling through the step in which the mineral is processed or recycled into a constituent material, are relevant for both the critical minerals requirement and the FEOC restriction discussed below. Battery materials may not contain applicable critical minerals. The final regulations replace the 50-percent value added test with a more precise and more stringent Traced Qualifying Value Test, which requires an OEM to fully trace any value added in each procurement chain that it applies toward the critical minerals requirement. The Traced Qualifying Value Test credits the share of value added by extraction or processing in the United States or a country with which the United States has a free trade agreement in effect, or recycling in North America. The final regulations adopt the Traced Qualifying Value Test for tax years ending after the final regs are published in the Federal


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Register, which is scheduled for May 6, 2024. The 50-percent value added test must be used for a vehicle for which the manufacturer provides a periodic written report before that publication date. It may also be used as an optional transition rule for vehicles for which a qualified manufacturer provides a periodic written report before January 1, 2027. For purposes of the 50 percent value added test, if multiple applicable critical mineral procurement chains are part of the same processing or recycling activity, value added should be allocated to each procurement chain based on relative mass.

### New Clean Vehicle Credit Battery Component Test

To further clarify the line between battery components and constituent materials, "battery materials" are defined as direct and indirect inputs to battery components that are produced through processing, rather than manufacturing or assembly. Battery materials are not considered a type of battery component, although battery materials may be manufactured or assembled into battery components. The three categories of battery materials are (1) applicable critical minerals, (2) constituent materials, and (3) battery materials without applicable critical minerals.

The IRS considered several comments regarding countries with which the United States has a free trade agreement in effect, but settled for fairly minor clarifications and consolidations of the proposed regs. In particular, the final regs continue to include Japan on the free-trade-agreement list based on its Critical Minerals Agreement (CMA) with the U.S.

The assessment of whether an agreement is in effect is something that the IRS will evaluate in the context of individual agreements. The IRS rejected suggestions to add several specific countries to the list, but will continue to work with the United States Trade Representative and across the federal government to determine if it is appropriate to list additional countries.

### Critical Minerals and Battery Components Tests in General

The final regs specify that reasonable reliance on a supplier attestation or certification is considered due diligence if the third-party manufacturer or supplier does not know or have reason to know after due diligence that the supplier attestation or certification is incorrect. The IRS will consider a range of remedial options in the event of inaccurate attestations, certification, or documentation. Parties to supply contracts may include a provision for such attestations as part of their contracts. For any new clean vehicles for which the qualified manufacturer provides a periodic written report before January 1, 2027, the due diligence requirement may exclude identified impracticable-to-trace battery materials (and associated constituent materials). This impracticable-to-trace test replaces the non-traceable materials category from the proposed regs. The identified impracticable-to-trace battery materials (and associated constituent materials) may also be excluded from the determination of whether a battery cell is FEOC-compliant. The IRS intends to continue to engage with OEMs and other stakeholders to develop the rules under the post-2024 upfront review process for the critical minerals and battery component requirements. The IRS is also considering future sub-regulatory guidance with respect to the process.

For purposes of the FEOC restriction, a new clean vehicle's clean vehicle battery is the battery from which the electric motor of the vehicle draws electricity to propel the vehicle. The final regs clarify that the FEOC restriction does not apply to new qualified fuel cell motor vehicles other than one with a clean vehicle battery, such as a plug-in hybrid fuel cell electric vehicle.

The final regs make the allocation based determination a permanent exception to the specific tracking requirement.

## IRS Issues FAQs on Disaster Relief Related to Retirement Plans

The IRS issued frequently asked questions (FAQs) related to distributions from retirement plans and IRS for individuals impacted by federally declared disasters. These FAQs cover the ongoing disaster relief for certain distributions and loans under the SECURE 2.0 Act of 2022. These questions have been issued to provide general information to taxpayers, tax professionals, employers, and retirement plan and IRA service providers as expeditiously as possible.

*FS-2024-19; IR-2024-132*

# Regulations Relating to GST Allocations Finalized

*T.D. 9996*

Regulations under Code Sec. 2642 governing requests for extensions of time to allocate generation-skipping transfer (GST) exemption have been issued by the IRS.

Requests for extensions of time under Code Sec. 2642(g)(1) apply to allocations of GST exemption under Code Sec. 2631, elections to opt out of automatic GST allocations under Code Sec. 2632(b)(3) and (c)(5), and elections to treat a trust as a GST trust under Code Sec. 2632(c)(5)(A)(ii). Reg. §§301.9100-2(b) and 301.9100-3 are amended to clarify that relief under Code Sec. 2642(g)(1) is no longer obtained under those provisions. Pending requests on the date of publication will continue to be processed unless the taxpayer withdraws the request and seeks relief under the final regulations. Rev. Proc. 2004-46 and Rev. Proc. 2004-47 remain effective for transferors that are within the scope of those procedures. The IRS intends to issue

regulations that will address the practical effect of granting relief and clarify the interplay between affirmative allocations and automatic allocations.

Requests for extensions of time under Code Sec. 2642(g)(1) will be granted when it is established to the satisfaction of the IRS that the transferor or transferor's estate acted reasonably and in good faith and granting relief would not prejudice the interests of the government. In determining whether actions were reasonable and in good faith, the IRS will consider the following nonexclusive factors: (1) the intent at the time of the transfer to timely allocate the GST exemption, as evidenced by trust instruments, transfer documents, federal estate or gift tax returns, or correspondence; (2) the occurrence of events beyond the control of the transferor or the transferor's estate; (3) the lack of awareness of the need to allocate the GST exemption to a transfer, considering both the experience of the transferor and the complexity of the GST issue; (4) evidence of consistency in allocating or not allocating the GST exemption; and (5) reasonable reliance on a qualified tax professional. The IRS will also consider these nonexclusive factors to determine whether the government would be prejudiced: (1) whether the use of hindsight would produce an economic advantage that would have been unavailable had the election been timely made; (2) whether the delay in filing a request for relief was done with the intent to deprive the IRS of sufficient time to challenge the claimed identity of the transferor; (3) whether granting relief would cause unreasonable disruptions or difficulties in adjusting the previous GST tax consequences that occurred because of failure to allocate the GST exemption; and (4) although the expiration of any statute of limitations on assessing or collecting transfer taxes prior to the request for relief is generally irrelevant, a gross valuation understatement could be considered prejudicial.

The regulations also clarify that relief under Code Sec. 2642(g)(1) will not be granted when the standards of reasonableness, good faith, and lack of prejudice to the government are not met, as in the following situations: (1) granting relief would decrease a timely filed allocation of GST exemption; (2) the transferor received accurate information in all material respects by a tax professional at the time of the transfer for which relief is requested; (3) certain circumstances concerning the timing of the request for relief; or (4) the request is an attempt to benefit from hindsight.

If an estate or gift tax return or Form 8939 is timely filed, an automatic six-month extension of time to file a supplemental estate or gift tax return or Form 8939 is granted on which the allocation of GST exemption or an election under Code Sec. 2632(b)(3) and (c)(5) will be granted. Except for the automatic six-month extension, requests for extensions of time to allocate GST exemption will be granted through the IRS letter ruling program.

The regulations are effective on May 6, 2024.

# Ruling Procedures for Certain Code Sec. 355 Transaction Matters Provided; Feedback Requested

*Rev. Proc. 2024-24; Notice 2024-38*

The IRS has issued procedures for requesting private letter rulings regarding certain matters related to Code Sec. 355 transactions (Rev. Proc. 2024-24). The procedures will generally apply to ruling requests received after May 31, 2024.

The IRS also has requested public feedback on the procedures provided in Rev. Proc. 2024-24 (Notice 2024-38). The feedback will be considered in developing future guidance.

## Code Sec. 355 Transactions and Prior IRS Ruling Guidance

In general, a transaction intended to qualify under Code Sec. 355 may occur either as a separate Code Sec. 355(c) Distribution or as part of a Divisive Reorganization (a Section 355 Transaction). The distributing corporation (Distributing) may distribute all of its controlled corporation (Controlled) stock and securities (if any) or may retain some Controlled stock or securities after the control distribution date. Section 355 Transactions may occur without recognition of gain or loss to Distributing, and without gain, loss, or income to Distributing's shareholders, if the requirements of Code Sec. 355 and other relevant provisions are satisfied.

In Rev. Proc. 2013-3, 2013-1 I.R.B. 113, the IRS took a no-ruling position with respect to Code Sec. 355 Transactions, but later removed this no-rule position with Rev. Proc. 2017-38, 2017-22 I.R.B. 1258.

Rev. Proc. 2013-32, 2013-28 I.R.B. 55, provided that private letter rulings no longer would be issued on the tax consequences of various corporate transactions, including transactions intended to qualify as Section 355 Transactions, but instead would be issued only on significant issues presented in those transactions. The IRS's current ruling policies in this area are described in Rev. Proc. 2024-1, 2024-1 I.R.B. 1, and Rev. Proc. 2024-3, 2024-1 I.R.B. 143.

Rev. Proc. 2024-1 and Rev. Proc. 2024-3 removed the no-rule position on the tax consequences of various corporate transactions and eliminated the issuance of rulings on significant issues, including with respect to Section 355 Transactions.

Rev. Proc. 2017-52 provides procedures for requesting private letter rulings regarding Section 355 Transactions and established a pilot program to issue private letter rulings that address the general tax consequences of a Section 355 Transaction.

Rev. Proc. 2018-53, 2018-43 I.R.B. 667, describes the procedures for requesting rulings on issues relating to the assumption or satisfaction of Distributing Debt (as defined therein) in Divisive Reorganizations and the representations, information, and analysis to be submitted in those requests.


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## Scope and Procedures of Rev. Proc. 2024-24

Rev. Proc. 2024-24 applies to ruling requests concerning the following transactions.

*Section 355 Transactions* - procedures are provided for taxpayers requesting rulings on Section 355 Transactions, including representations, information, and analysis to be submitted with those requests; additional procedures are provided for requesting rulings on certain matters that are not addressed by Rev. Proc. 2017-52.

*Divisive Reorganizations* – a taxpayer proposing to engage in a Divisive Reorganization may request rulings that no gain or loss will be recognized to Distributing upon (i) Controlled's Assumption of a Distributing Liability, including a Distributing Contingent Liability, under Code Sec. 357(a), (ii) Distributing's receipt of Section 361 Consideration from Controlled, including Post-Distribution Payments, under Code Sec. 361(b), and (iii) Distributing's distribution to a Distributing shareholder of Section 361 Consideration that consists of Controlled stock or other Qualified Property, or Distributing's transfer to a Distributing creditor of that consideration to satisfy Distributing Debt, under Code Sec. 361(c).

In addition, Rev. Proc. 2024-24 sets forth (1) procedures for requests for rulings common to both Section 355(c) Distributions and Divisive Reorganizations, (2) procedures for requests for rulings regarding Code Secs. 357 and 361 for Divisive Reorganizations, and (3) requirements for representations, information, and analysis for all ruling requests on Section 355 Transactions and on divisive reorganizations.

## Effective Date and Effect on Other Documents

The procedures set forth in Rev. Proc. 2024-24 will apply to all ruling requests postmarked or, if not mailed, received by the IRS after May 31, 2024.

Rev. Proc. 2017-52 is modified by deleting Representations 2, 4, and 17 through 21 in section 3 of the Appendix. Rev. Proc. 2018-53 is superseded.

## Request for Public Feedback

The IRS has requested public feedback on the procedures in Rev. Proc. 2024-24 (Notice 2024-38). The notice also describes the Treasury Department's and IRS's views and concerns regarding certain matters addressed in Rev. Proc. 2024-24, and feedback is requested on these as well. Feedback provided in response to Notice 2024-38 will be considered in developing future guidance.

Written feedback should be submitted by July 30, 2024. However, consideration will be given to any written feedback submitted after July 30, 2024, if such consideration will not delay the issuance of future published guidance. Notice 2024-38 also sets forth the procedure for submitting feedback.

# Advanced Energy Project Credits Allocation Round 2 Announced

*Notice 2024-36; IR-2024-124*

The IRS is preparing to begin a second round of allocations of the Code Sec. 48C(e) advanced energy project credit. The IRS expects to allocate approximately $6 billion in credits by January 15, 2025. A third allocation round might be needed if Round 2 fails to allocate at least $2.5 billion of the credits to projects in energy communities.

## Allocation Process

To apply for allocations, taxpayers must first submit concept papers to the IRS through the Department of Energy (DOE) website's Qualified Advanced Energy Project Credit Program Applicant Portal (48C Portal), at https://eco.energy.gov/48C/. This portal is expected to open by Tuesday, May 28, 2024. Taxpayers must submit concept papers by 5:00 PM Eastern Time, within 30 calendar days after the portal opens.

DOE will issue a letter encouraging or discouraging the taxpayer to submit a joint application for DOE recommendation and for §48C(e) certification. The taxpayer then has 50 calendar days to submit a Sec. 48C(e) application through the portal. After conducting a technical review, DOE recommends to the IRS whether an application should be accepted or rejected, and also ranks all of the applications.

The IRS accepts or rejects each application based on DOE's recommendation and ranking. Each taxpayer that submits an application will receive either an acceptance or a rejection letter from the IRS. If the IRS denies an application, the taxpayer may request a debriefing with DOE.

## Qualifying for an Allocated Credit

A taxpayer must receive an allocation letter before placing the credit facility in service. Within two years of receiving the letter, a taxpayer must notify DOE that the certification requirements have been met by submitting the required information through the 48C Portal. After reviewing the information, DOE notifies the taxpayer and the IRS if the taxpayer satisfies the certification requirements.

The IRS sends a successful taxpayer a certification letter. The taxpayer then has two years to notify the IRS through the 48C portal that the credit facility has been placed in service; otherwise, the taxpayer forfeits its credit allocation. DOE notifies the taxpayer and the IRS that it has received the taxpayer's notification that the credit facility has been placed in service or

notification that the taxpayer will not place the facility in service within the required two-year period.

A taxpayer that has placed the credit facility in service and notified the DOE within the required two-year period claims the advanced energy project credit on its federal income tax return for the tax year the facility is placed in service. A taxpayer that chooses to withdraw a submission at any phase (whether at the concept paper phase, the application phase, the post-Allocation Letter phase, or the post-Certification Letter phase) must provide a formal withdrawal notification through the 48C Portal.

### Effect on Other Documents

Notice 2023-18, 2023-10 I.R.B. 508, is clarified and modified. Notice 2023-44, 2023-25 I.R.B. 924, is amplified and superseded.

## New Safe Harbors Available for Sustainable Aviation Fuel Credit

*Notice 2024-37; IR-2024-127*

The IRS provided additional safe harbors for the sustainable aviation fuel (SAF) credit created by the Inflation Reduction Act of 2022 (P.L. 117-169).

Under the first safe harbor, the IRS will accept an emissions reduction percentage for the SAF synthetic blending component in the qualified SAF mixture that is calculated in accordance with the 40BSAF-GREET 2024 model, provided the credit's certification requirements are satisfied. The Department of Energy (DOE) released the 40BSAF-GREET 2024 model on April 30, 2024, and it is available at https://www.energy.gov/media/322677DOE. DOE worked with the Treasury Department and other federal agencies to develop the model, and DOE and the Environmental Protection Agency (EPA) have described the parameters of the model that were included to satisfy the credit requirements.

Under the second safe harbor, when the 40BSAF-GREET 2024 model is used for a SAF qualified mixture that meets the requirements of ASTM D7566, the IRS will consider a registered producer or importer of a SAF synthetic blending component as having met the credit's certification requirements for a SAF synthetic blending component. The SAF producer must obtain the requisite certification from a CARB LCFS verifier in a format that is substantially similar to an LCFS Verification Statement (CARB certification).

Under the third safe harbor, for purposes of the USDA Climate Smart Agriculture (CSA) Pilot Program, in lieu of a full lifecycle analysis incorporated into the relevant model, a SAF synthetic blending component produced from CSA corn or CSA soybean is eligible for an additional proxy reduction (CSA reduction) in the calculation of the emissions reduction percentage. However, additional rules apply to the unrelated third party certifications and registered SAF producer requirements.

The fourth safe harbor provides transition relief for registration applications that were made before or were pending when the IRS issued these safe harbors.

## Change of Accounting Method Procedures Updated

*Rev. Proc. 2024-23*

The IRS has released guidance listing the specific changes in accounting method to which the automatic change procedures set forth in Rev. Proc. 2015-13, I.R.B. 2015-5, 419, apply. The latest guidance updates and supersedes the current list of automatic changes found in Rev. Proc. 2023-24, I.R.B. 2023-28, 1207.

The following sections are removed because these sections are obsolete; (1) Section 7.01, relating to changes to a different method or different amortization period for research and experimental expenditures; (2) Section 12.18, relating to late revocation of elections under Code Sec. 263A(d)(3); and; (3) Section 20.13, relating to an accrual method taxpayer that wants to change its method of accounting for one or more inventory costs to treat such costs as incurred in accordance with Reg. §§1.461-1(a)(2) and 1.461-4(d)(4);

The following sections are modified:

(1) Section 3.12, relating to a taxpayer that wants to change its treatment of natural gas transmission and distribution property costs to use the natural gas transmission and distribution property safe harbor method of accounting (NGSH Method) under Rev. Proc. 2023-15, is clarified as follows. First, by adding new paragraph 3.12(8) to allow a taxpayer changing to the NGSH Method to choose to treat a method change filed for the taxpayer's second taxable year ending after May 1, 2023, as filed for the taxpayer's first taxable year ending after May 1, 2023, solely for purposes of the special rule under section 5.08(3)(a) of Rev. Proc. 2023-15. Second, section 3.12(3)(c)(ii) is clarified to provide that if the taxpayer's change to the NGSH Method described in Rev. Proc. 2023-15 applies to any asset that is public utility property within the meaning of Code Sec. 168(i)(1), then the taxpayer will adjust its deferred tax reserve account or similar account in the taxpayer's regulatory books of account by the amount of the deferral of federal income tax liability associated with the Code Sec. 481(a) adjustment applicable to the public


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utility property subject to the Form 3115 if such amount is no longer being normalized for regulatory purposes by the taxpayer;

(2) Section 6.01, relating to changing from an impermissible to a permissible method of accounting for depreciation or amortization, is modified to remove the second sentence of section 6.01(1)(c)(xx), providing that the change in method of accounting under section 6.21 could be filed under Section 6.01 if the duplicate copy was properly filed under Section 6.01 before May 11, 2021, because this language is obsolete;

(3) Section 6.18, relating to changing from an impermissible to a permissible method of accounting for an item of qualified improvement property placed in service after December 31, 2017, is modified by removing paragraph (2), providing a temporary waiver of the eligibility rule in sections 5.01(1)(d) and 5.01(1)(f) of Rev. Proc. 2015-13, because this language is obsolete;

(4) Section 6.19, relating to certain late elections under §§ 168 and 1502 or revocation of certain elections under Code Sec. 168, is modified to remove all references to Rev. Proc. 2020-25, I.R.B. 2020-19, 785, because these references as used in Section 6.19 are obsolete;

(5) Section 6.21, relating to depreciation of tangible property under Code Sec. 168(g) by controlled foreign corporations, is modified by removing the sunset provision in paragraph (3) to permit CFCs to continue to change their depreciation method to the alternative depreciation system (ADS) in Code Sec. 168(g) under the automatic change procedures of Rev. Proc. 2015-13 (regardless of whether the CFC's historic depreciation method was permissible or impermissible);

(6) Section 7.01, relating to a changing the method of accounting for SRE expenditures, is modified and clarified as follows. First, new section 7.01(2)(c) is added to clarify that section 7.01(1)(a) of this revenue procedure does not apply to a change to rely on interim guidance provided in sections 8 and 9 of Notice 2023-63, as modified by Notice 2024-12. Second, section 7.01(5)(a) is modified to provide that the eligibility rule in section 5.01(1)(d) of Rev. Proc. 2015-13 (relating to changes in the final year of a trade or business) does not apply to a change described in section 7.01(1)(a) of this revenue procedure for the taxpayer's first or second taxable year beginning after December 31, 2021. Third, section 7.01(5)(b) is clarified to provide that a taxpayer may make a change described in section 7.01(1)(a) of this revenue procedure for its second taxable year beginning after December 31, 2021, regardless of whether the taxpayer made a change for the same item for its first taxable year beginning after December 31, 2021. Fourth, section 7.01(6) is clarified to provide that a taxpayer does not receive audit protection under section 8.01 of Rev. Proc. 2015-13 for a change under section 7.01(1)(a) of this revenue procedure in the second taxable year beginning after December 31, 2021, with respect to expenditures paid or incurred in the first taxable year beginning after December 31, 2021, if the taxpayer did not change its method of accounting under section 7.01(1)(a) in an effort to comply with §174 for the first taxable year beginning after December 31, 2021. Fifth, section 7.01(7) is modified to provide that the designated automatic accounting method change number for all changes under section 7.01 of this revenue procedure is "265;"

(7) Section 12.01, relating to certain uniform capitalization (UNICAP) methods used by resellers and reseller-producers, is modified as follows. First, section 12.01(2)(b), providing a temporary waiver of the eligibility rule in section 5.01(1)(f) of Rev. Proc. 2015-13, is removed because this language is obsolete. Second, to add section 12.01(1)(b)(vi) to provide that the change under section 12.01 does not apply to a taxpayer changing to or from the direct reallocation method or the step-allocation method. Instead, this change must be requested under the non-automatic change procedures provided in Rev. Proc. 2015-13. Third, to add new section 12.01(1)(b)(vii) to provide that the change under section 12.01 does not apply to a taxpayer using the direct reallocation method or step-allocation method that wishes to either make an election or revoke an election to use the 90-10 de minimis rule to allocate a mixed service department's costs to resale activities. Instead, this change must be requested under the non-automatic change procedures provided in Rev. Proc. 2015-13;

(8) Section 12.02, relating to certain uniform capitalization (UNICAP) methods used by producers and reseller-producers, is modified as follows. First, section 12.02(4)(b), providing a temporary waiver of the eligibility rule in section 5.01(1)(f) of Rev. Proc. 2015-13, is removed because this language is obsolete. Second, section 12.02(1)(b)(vi) is added to provide that the change under Section 12.02 does not apply to a taxpayer changing to or from the direct reallocation method or the step-allocation method. Instead, this change must be requested under the non-automatic change procedures provided in Rev. Proc. 2015-13. Third, new section 12.02(1)(b)(vii) is added to provide that the change under Section 12.02 does not apply to a taxpayer using the direct reallocation method or step-allocation method that wishes to either make an election or revoke an election to use the 90-10 de minimis rule to allocate a mixed service department's costs to production or resale activities. Instead, this change must be requested under the non-automatic change procedures provided in Rev. Proc. 2015-13;

(9) Section 12.07, relating to a change not to apply Code Sec. 263A to one or more plants removed from the list of plants that have a preproductive period in excess of two years, is modified to remove section 12.07(2), providing audit protection that applies to blackberry, raspberry, and papaya plants for taxable years that end on or before February 15, 2013, because this language is obsolete;

(10) Section 12.16, relating to the small taxpayer exception from the requirement to capitalize costs under Code Sec. 263A, is modified to remove section 12.16(3)(b), providing a temporary

waiver of the eligibility rule in section 5.01(1)(f) of Rev. Proc. 2015-13 for certain taxpayers, because this language is obsolete;

(11) Section 15.01, relating to changes in overall method from the cash receipts and disbursements method (cash method) to an accrual method is modified to remove section 15.01(5)(b), providing a temporary waiver of the eligibility rule in section 5.01(1)(e) of Rev. Proc. 2015-13 for changes to comply with Code Sec. 451(b), because this language is obsolete;

(12) Section 15.17, relating to small business taxpayers changing the overall method of accounting to the cash method or to a method of accounting in which the small business taxpayer uses an accrual method for purchases and sales of inventories and uses the cash method of accounting for computing all other items of income and expense, is modified to remove section 15.17(6)(b), providing a temporary waiver of the eligibility rule in section 5.01(1)(e) of Rev. Proc. 2015-13 for certain taxpayers, because this language is obsolete;

(13) Section 16.08, relating to changes in the timing of income recognition under Code Sec. 451(b) and (c), is modified and clarified as follows. First, section 16.08(3)(a) is added, to clarify that a change under section 16.02 does not apply to a change to comply with the all events test in Reg. §1.451-1(a). Instead, this change must be requested under the non-automatic change procedures provided in Rev. Proc. 2015-13. Second, section 16.08 is modified to remove section 16.08(4)(a), relating to short Form 3115, because it is obsolete. Third, section 16.08 is modified to remove section 16.08(4)(c), relating to streamlined method change procedures for certain taxpayers, because it is obsolete. Fourth, section 16.08 is modified to remove section 16.08(5)(c), relating to certain changes with a Code Sec. 481(a) adjustment of zero being disregarded for eligibility rules, because it is obsolete. Fifth, section 16.08 is modified to remove section 16.08(6)(a), relating to audit protection for taxpayers using the streamlined method change procedures, because it is obsolete. Sixth, section 16.08 is modified to remove section 16.08(6)(b)(i), relating to audit protection for taxpayers under examination, because it is obsolete. Seventh, section 16.08(7)(b), which provides an ordering rule for concurrent cost-offset related inventory method changes and changes to apply a cost offset method, is modified to require a taxpayer making a cost-offset related inventory method change(s) and a change to the AFS cost offset method or advance payment cost offset method in the same year of change to make the cost-offset related inventory method change(s) first. Sections 16.08(2)(a)(i)(E), 16.08(2)(a)(ii)(F) and 16.08(2)(b)(v), which provide corresponding changes to a cost offset method as a result of cost-offset related inventory method changes, have been modified to apply only to taxpayers presently using a cost offset method, consistent with the new ordering rule. Eighth, the ordering rule for concurrent cost-offset related inventory method changes and corresponding changes to a cost offset method in section 16.08(7)(b) has been moved to a new section 16.08(7)(c); section 16.08(7)(c) is also clarified to provide that a taxpayer may file a single Form 3115 that includes both the cost-offset related inventory method change and the corresponding cost offset change. Ninth, section 16.08(7)(d) is added to provide examples to illustrate the operation of the ordering rules which require a taxpayer to make a cost-offset related inventory method change before a change to apply a cost offset method and a cost-offset related inventory method change before a corresponding change to a cost offset method;

(14) Section 19.02, regarding changes in method of accounting under Code Sec. 460 to rely on the interim guidance provided in section 8 of Notice 2023-63, I.R.B. 2023-39, 919, is modified as follows. Section 19.02(4) is modified to provide that the eligibility rule in section 5.01(1)(d) of Rev. Proc. 2015-13 (relating to changes in the final year of a trade or business) does not apply to a change described in section 19.02(1) of this revenue procedure for the taxpayer's first or second taxable year beginning after December 31, 2021;

(15) Section 22.04, relating to a taxpayer that wants to change from an impermissible method of identifying or valuing inventories to a permissible method of identifying or valuing inventories, is modified to remove section 22.04(1)(d), providing a temporary waiver of the eligibility rule in section 5.01(1)(f) of Rev. Proc. 2015-13 for certain changes related to a cost offset method, because this language is obsolete;

(16) Section 22.10, relating to changes to permissible methods of identification and valuation of inventories, is modified by removing section 22.10(1)(d), providing a temporary waiver of the eligibility rule in section 5.01(1)(f) of Rev. Proc. 2015-13 for certain changes related to a cost offset method, because this language is obsolete;

(17) Section 22.17, relating to changes from currently deducting inventories to permissible methods of identification and valuation of inventories, is modified by removing section 22.10(1)(d), providing a temporary waiver of the eligibility rule in section 5.01(1)(f) of Rev. Proc. 2015-13 for certain changes related to a cost offset method, because this language is obsolete;

(18) Section 22.18, relating to a change by a small business taxpayer to certain Code Sec. 471 methods of accounting, is modified as follows. First, section 22.18(5)(b) and (c), providing a temporary waiver of the eligibility rule in section 5.01(1)(f) of Rev. Proc. 2015-13 for certain changes, is removed because the language is obsolete. Second, section 22.18 (6)(b), providing streamlined method change procedures for certain taxpayers, is removed because this language is obsolete;

(19) Section 23.01, relating to certain changes from the LIFO inventory method, is modified as follows. First, section 23.01(2)(b), providing a temporary waiver of the eligibility rule in section 5.01(1)(f) of Rev. Proc. 2015-13 for certain changes, is removed because the language is obsolete. Second, section 23.01(8), denying


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ruling protection in certain cases, is removed because this language is obsolete; and

(20) Section 24.02, relating to taxpayers requesting to change their method of accounting from the mark-to-market method of accounting described in Code Sec. 475 to a realization method, is clarified to provide that a dealer in securities making such change under the non-automatic change procedures in Rev. Proc. 2015-13 must also file a Notification Statement that satisfies all applicable requirements of section 24.02(7) of this revenue procedure, including the timely filing requirements.

Subject to a transition rule, this revenue procedure is effective for a Form 3115 filed on or after April 30, 2024, for a year of change ending on or after September 30, 2023, that is filed under the automatic change procedures.

Rev. Proc. 2024-23 amplifies and modifies Rev. Proc. 2023-24, I.R.B. 2023-28, 1207. Rev. Proc. 2011-46, I.R.B. 2011-42, 518, is modified. Rev. Proc. 2024-23 also modifies Rev. Rul. 2004-62, 2004-1 CB 1072; Rev. Rul. 2000-7, 2000-9 CB 712; Rev. Rul. 2000-4, 2000-1 CB 331; Rev. Proc. 2007-48, 2007-2 CB 110; Rev. Proc. 2007-16, CB 2007-1, 358; and Rev. Proc. 2000-50, I.R.B. 2000-52, 601.

# Charitable Contribution Deductions No Longer Allowed for Organizations

*Announcement 2024-20*

The IRS has announced that the following organizations no longer qualify under Code Sec. 170(c)(2) as an organization for which deductions for charitable contributions are allowed (1) The Beard Foundation, of Arkansas. Effective revocation date: January 1, 2020; (2) Base Foundation, of Missouri. Effective revocation date: January 1, 2020; and (3) New Irvine Yan Charity Organization, of California. Effective revocation date: January 1, 2020.

However, contributions made to the organization before May 6, 2024, will generally be deductible, unless made by a person who (1) knew of the revocation, (2) was aware that the revocation was imminent or (3) was responsible, in whole or in part, for the activities or deficiencies that gave rise to the loss of qualification. If the organization files suit, in a timely manner, for declaratory judgment under Code Sec. 7428, challenging the revocation of its status as an eligible donee of deductible charitable contributions, Code Sec. 170 contributions will continue to be deductible. Protection under Code Sec. 7428(c) would begin on May 6, 2024. The maximum amount of individual contributions protected would be $1,000, with a husband and wife treated as one taxpayer. This protection is not afforded to anyone who was responsible, in whole or in part, for the acts or omissions of the organization that resulted in revocation of qualification.

# TAX BRIEFS

### *Exempt Organizations*

An organization's tax-exempt status under Code Sec. 501 was revoked. The entity, incorporated as a nonprofit public benefit organization to provide charitable legal services, failed the operational test. The organization substantially benefited private interests and its net earnings inured benefit to its private shareholders and individuals.

*IRS Letter Ruling 202418014*

### *Expatriates*

The IRS has released the list of individuals who lost their U.S. citizenship within the meaning of Code Sec. 6039G during the quarter than ended on March 31, 2024. Under the Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191), the State Department is required to provide the Treasury Secretary with information regarding the individuals' loss of nationality.

*Quarterly Publication of Individuals Who Have Chosen to Expatriate*

### *Liens and Levies*

The IRS settlement officer did not abuse his discretion in sustaining the proposed levy against an individual. The taxpayer did not properly raise an underlying liability challenge to her tax liability during the collection due process hearing.

*White, TC, Dec. 62,461(M)*

### *Research Credit*

The Tax Court correctly disallowed a tax credit for qualified research expenses claimed. The Tax Court found it impossible to determine how much time the taxpayer-husband spent conducting or supervising research and whether the research was "qualified".

*S. Moore, CA-7, 2024-1 USTC ¶50,147*